

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 08-13**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

Application of the Tennessee sales and use tax to the sale of external fixators as medical implants.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

**FACTS**

[TAXPAYER] is a company that manufactures and sells medical implants and medical instruments primarily to hospitals, surgical centers and veterinarians. One of the products the Taxpayer sells is external fixators. The external fixator is composed of pins screwed into the bone, which are attached to an external rod or tube that can be adjusted to various angles. The

external fixators come in several different shapes and sizes, allowing for use in supporting fractures in the arms and legs, as well as with smaller fractures, and they are used primarily with open fractures. The external fixators correct the deformity created by the fracture and support the bone during healing.

The amount of time an external fixator implant remains attached to the body varies from a few days (when removed to use a different implant) to the entire period for which the injury takes to heal. Based on materials provided by Taxpayer, external fixators are medical corrective devices used in open fracture cases to achieve internal traction or immobilization of bone fractures.

The Taxpayer does not require prescriptions for the external fixators, as its products are regulated by the FDA and are shipped containing a label that states: "Caution: Federal law restricts this device to sales by or on the order of a physician." The prescriptions for the external fixators are part of the operative notes in a patient's file, and, pursuant to prevailing business practices, hospitals do not submit prescriptions to the Taxpayer, a vendor of prosthetic devices, due to provisions related to nondisclosure of individually identifiable health information contained in the Health Insurance Portability and Accounting Act of 1996 ("HIPAA").

### **QUESTIONS**

1. Is the sale of external fixators exempt for Tennessee sales and use tax purposes?
2. Is a prescription required for an exemption to apply?

### **RULINGS**

1. Yes, provided that as of January 1, 2008, the external fixators are sold for human use. The sale of external fixators to veterinarians for animal use is not included within the exemption, and thus, is taxable for sales and use tax purposes.
2. No.

### **ANALYSIS**

Under the Retailers' Sales Tax Act, Tenn. Code Ann. § 67-6-101 *et seq.*, the sale of tangible personal property, which includes external fixators, is generally subject to sales and use tax. An item of tangible personal property is exempt for purposes of the Tennessee sales and use tax only if the item is specifically included within the scope of a statutory exemption. The Retailers' Sales Tax Act has been amended by 2007 Tenn. Pub. Acts, Chapter 602, effective January 1, 2008. Accordingly, the exemption provisions applicable to the sale of external fixators change as of January 1, 2008. The analysis provided below for the sale of external fixators is divided into three sections, the first discussing the Tennessee sales and tax use laws in effect through December 31, 2007, the second explaining the exemption provisions applicable as of January 1, 2008, and the third discussing whether prescriptions are required.

In addition, the Taxpayer indicated that the external fixators are sold individually as well as in conjunction with other related items.<sup>1</sup> However, pursuant to the Taxpayer's ruling request, the scope of this letter ruling is limited only to the sale of external fixators individually for sales and use tax purposes.

*1. The Sales and Use Tax Laws in effect through December 31, 2007*

The sale of external fixators is exempt from the Tennessee sales and use tax as orthotics through December 31, 2007.

Tenn. Code Ann. § 67-6-314(5) (2006) provides an exemption from the sales and use tax for the sale of "orthotics... and other similarly medical corrective or support appliances and devices." "Orthotics" is generally defined as "a branch of mechanical and medical science that deals with the support and bracing of weak or ineffective joints or muscles." MERRIAM-WEBSTER MEDICAL DICTIONARY. The exemption for orthotics includes devices used to brace, support or align the skeletal or muscular system. The Taxpayer sells external fixators as medical corrective devices for use in open fracture cases to achieve internal traction or immobilization of bone fractures. "Traction" is generally defined as "a pulling force exerted on a skeletal structure (as in a fracture) by means of a special device or apparatus." MERRIAM-WEBSTER MEDICAL DICTIONARY. The purpose of the external fixators is to support or align the skeletal system, which falls within the exemption for orthotics. Accordingly, through December 31, 2007, the sale of external fixators is exempt from the sales and use tax as orthotics.

*2. The Sales and Use Tax Laws as of January 1, 2008*

Effective January 1, 2008, the sale of external fixators is exempt from the sales and use tax as prosthetics, provided that the external fixators are sold for human use.

Tenn. Code Ann. § 67-6-314(1) (Supp. 2007) provides an exemption from the sales and use tax for prosthetic devices for human use. Tenn. Code Ann. § 67-6-102(62) (Supp. 2007) defines the term "prosthetic device" in part as "a replacement, corrective or supportive device including repair and replacement parts for same worn on or in the body," which is used to "correct a physical deformity or malfunction" or to "support a weak or deformed portion of the body." In other words, to qualify for an exemption from the sales and use tax as a prosthetic device, an item must be: (1) a replacement, corrective or supportive device; (2) worn in or on the body; (3) used to correct a deformity or malfunction or to support a weak or deformed part of the body; and (4) sold for human use.

In this case, the Taxpayer sells external fixators, which are implanted temporarily in a patient in open fracture cases. The external fixators act as a corrective device worn in the body to correct

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<sup>1</sup> Note that when several items are sold together, but each item is itemized and priced separately, the taxability of each item is determined independently of the other items. Accordingly, if the sale of external fixators individually is exempt from the sales and use tax, then the sale of external fixators included with other items is also exempt, provided that the external fixators are itemized and priced separately. However, if the external fixators are sold in conjunction with other items where each item is not itemized and priced separately, and group of items includes taxable items, then every item, including the external fixators, is subject to the sales and use tax.

the skeletal system after a bone fracture, thus satisfying the first three requirements. In addition, external fixators perform a similar function as “traction devices” worn on the body to correct large fracture cases, and the exemption for prosthetic devices includes such traction devices worn on the body. Accordingly, the sale of external fixators is exempt from the sales and tax laws as prosthetic devices, provided that the external fixators meet the fourth requirement and are sold for human use.<sup>2</sup>

### 3. *Prescriptions*

A prescription is not required for the sale of external fixators to be exempt from the sales and use tax.

Neither the exemption for orthotics under Tenn. Code Ann. § 67-6-314(5) (2006), effective through December 31, 2007, nor the exemption for prosthetic devices under Tenn. Code Ann. § 67-6-314(1) (Supp. 2007), effective January 1, 2008, require a prescription for the exemption to apply. Accordingly, a prescription is not required for the sale of external fixators to be exempt.

## CONCLUSION

Through December 31, 2007, the sale of external fixators is exempt from the sales and use tax as orthotics under Tenn. Code Ann. § 67-6-314(5) (2006) because the external fixators are used to support or align the skeletal system. Furthermore, as of January 1, 2008, the sale of external fixators is exempt from the sales and use tax as prosthetic devices under Tenn. Code Ann. § 67-6-314(1) (Supp. 2007), provided that they are sold for human use, because the external fixators are corrective devices worn in the body used to correct a bone fracture. Additionally, regardless of when the external fixators are sold, a prescription is not required for the appropriate exemption to apply.

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APPROVED: Reagan Farr  
Commissioner of Revenue

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<sup>2</sup> Note that because the exemption for prosthetic devices under Tenn. Code Ann. § 67-6-314(1) (Supp. 2007) requires the devices to be sold “for human use,” the sale of external fixators to veterinarians for animal use is not included within the exemption, and thus, is taxable for sales and use tax purposes.